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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,291

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Edward J. Cheal

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12/31/2007

FOLEY HOAG, LLP

PATENT GROUP, WORLD TRADE CENTER WEST

155 SEAPORT BLVD

BOSTON, MA 02110

EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

12/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/595,291

Applicant(s)

CHEAL ET AL.

Examiner

Ann Schillinger

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/16/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

Claims 1, 2, 11, and 12-16 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11, 12, and 14-16 of U.S. Patent No. 7,044,975 in view of Henssge et al. (U.S. Pat. No. 5,047,060). US Pat. No. 7,044,975 does not disclose a shaft with a tapered mid-section and a distal end with a rounded tip. However, Henssge et al. teaches a hip joint prosthesis with these features as shown in Figures 1-3 and columns 1 and 2. It is well-known in the art to use this type of shape for a joint prosthetic shaft as it better fits the natural bone's anatomy and requires less bone to be removed from the patient to implant the prosthesis. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a shaft with a tapered mid-section and a distal end with a rounded tip in order to it better fit the natural bone's anatomy and remove less bone from the patient to implant the prosthesis.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 and 17-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller (US Pat. No. 4, 908,032) in view of Henssge et al. (US Pat. No. 5,047,060). Keller discloses the following: a head member (7), with a bore (Figures 1 and 2); a proximal body (6), with a base, a plug (located at the top of element 6), and a spigot (8) with a

locking band (10); a stem member (4); and a shaft (2) with a midshaft portion and a distal portion with a rounded tip (see Figures 1 and 2). Keller does not disclose a bore being the proximal portion of the stem member to hold the spigot. Keller has this connecting bore in the spigot instead. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the bore in the proximal portion of the stem member, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

The Keller reference has a shaft that is generally tapered overall; however, Keller does not disclose a shaft that is continuously tapered in the medial-lateral direction so that the cross-sectional area of the shaft in that portion continuously decreases distally. Henssge et al. discloses a hip joint prosthesis with this shape in Figures 1-3 and columns 1 and 2. It is well-known in the art to use this type of shape for a joint prosthetic shaft as it better fits the natural bone's anatomy and requires less bone to be removed from the patient to implant the prosthesis. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a shaft with a tapered mid-section and a distal end with a rounded tip in order to it better fit the natural bone's anatomy and remove less bone from the patient to implant the prosthesis.

An additional teaching reference is Dwyer et al. (US Pat. No. 6,706,072) which states in col. 6, lines 59-67 that various parts of the femoral prosthesis, including the shaft, may be given various configuration, diameters, angles, and lengths to fit the needs of a given patient's anatomy.

Keller discloses the limitations of claims 2, 4-8, 10, 11, 17, 20, 28, and 29 as shown in Figures 1 and 2.

Keller discloses the limitations of claim 3 where the second locking band is elements 11 and 12.

Keller discloses the following of claim 18: the joint prosthesis of claim 17, wherein the stem member defines a hole (9) at the base of the bore.

White et al. discloses the limitations of claims 19, 21, and 22 where the threaded hole is shown in Figures 1 and 2, and the bolt is 11, 12.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller in view of Henssge et al., as described in claim 1, further in view of Lazzeri et al. (US Pat. No. 4,963,155). Keller and Henssge et al. disclose the invention substantially as claimed, however, they do not disclose a key with corresponding receptacles. Lazzeri et al. teaches a set of surgical products, including a hip prosthesis that use a key system col. 2, lines 1-20, column 3, and column 4 for the purpose of providing the prosthetic with the proper orientation required for a particular patient. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a key with corresponding receptacles in order to provide the prosthetic with the proper orientation required for a particular patient.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
December 21, 2007



**CORRINE McDERMOTT**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**